

# SENATE BILL REPORT

## SHB 1148

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As of March 30, 2015

**Title:** An act relating to determining sentences for multiple offenses and enhancements.

**Brief Description:** Determining sentences for multiple offenses and enhancements.

**Sponsors:** House Committee on Public Safety (originally sponsored by Representative Goodman).

**Brief History:** Passed House: 2/19/15, 97-0.

**Committee Activity:** Law & Justice: 3/24/15.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Lindsay Erickson (786-7465)

**Background:** Under the Sentencing Reform Act, sentences for typical felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or seriousness level, of the offense and the convicted person's offender score, which is based on the offender's criminal history.

Consecutive Sentencing. Current offenses sentenced together are generally served concurrently, rather than consecutively, with two exceptions: (1) two or more serious violent offenses arising from separate and distinct criminal conduct; and (2) current conviction for unlawful possession of a firearm in the first or second degree and theft of a firearm or possession of a stolen firearm, or both. Under those exceptions, the sentences are served consecutively.

The sentence for multiple serious violent offenses is calculated separately for each offense. For the offense with the highest seriousness level, the sentencing range is calculated using an offender score which incorporates the offender's prior criminal history and any other current offenses which are not serious violent offenses. The sentences for the other current serious violent offenses are calculated using an offender score of zero.

Additionally, there is a mandatory sentencing enhancement if certain offenses were committed with a firearm or other deadly weapon. This enhancement is mandatory, served in total confinement, and it must run consecutively to all other sentencing provisions, including any other firearm or deadly weapon sentence enhancements. The enhancement applies to

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any felony except possession of a machine gun, possession of a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony. The firearm enhancement is five years for a class A felony, three years for a class B felony, and 18 months for a class C felony. For a deadly weapon, the enhancement is two years for a class A felony, one year for a class B felony, and six months for a class C felony.

Exceptional Sentences. If there are substantial and compelling reasons justifying an exceptional sentence, the court can impose a sentence outside the standard sentence range. Exceptional sentences must be for a determinate term and cannot exceed the statutory maximum or a mandatory minimum for the offense. One mitigating factor which may be found by the court and used to impose an exceptional sentence below the standard sentence range is if the operation of the multiple offense policy results in a presumptive sentence that is clearly excessive.

**Summary of Bill:** Consecutive Sentencing. In calculating the sentence range for two or more serious violent offenses arising from separate and distinct conduct, the sentence for the most severe offense is calculated using the higher offender score. Most severe offense is defined to mean the serious violent offense that has the highest sentence range for an offender score computed using the offender's prior convictions and current convictions that are not serious violent offenses. This definition allows for consideration of anticipatory offenses, which do not have a seriousness level, but are given a sentencing range of 75 percent of the range for the completed offense.

Exceptional Sentences. A court may impose a mitigated exceptional sentence if the operation of the consecutive or concurrent sentence policy results in a clearly excessive sentence. The consecutive or concurrent sentence policy includes the mandatory consecutive sentences for serious violent offenses and certain firearm offenses, as well as the mandatory sentence enhancements for firearms and deadly weapons. When a court imposes a sentence below the standard range in a case where consecutive sentences create a sentence that is clearly excessive, the period of confinement imposed must not be below the minimum sentence for the most serious current offense including any enhancements, and must be at least one enhancement per victim for deadly weapon and firearm enhancements.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill remediates the situation where there are multiple sentencing enhancements when there is one course of conduct. There is currently no "release valve" for the hard time for armed crime provision. This bill allows a safety valve for mandatory enhancements that came after the Sentencing Reform Act, which created a safety valve for sentences involving serious violent offenses. The Legislature must create this enhancement-collapsing ability. In one instance, a man received an 83-year

sentence for a nonviolent offense with no priors. The crime committed was a home invasion involving many guns, in which no one was hurt, and he sat in the backseat of a waiting car while the crime was committed. This crime occurred outside of his sight. He took his case to trial, and all others pled. He was convicted on a theory of accomplice liability – and he had to receive an 83-year sentence due to all the gun enhancements. The judge commented during sentencing that he needed a safety valve to prevent the stacking of all the firearm enhancements. This bill will give that power back to the judges. This bill would be difficult to apply retroactively.

**Persons Testifying:** PRO: Representative Goodman, prime sponsor; Tom McBride, WA Assoc. of Prosecuting Attorneys; Vicky Wiebe, citizen

**Persons Signed in to Testify But Not Testifying:** No one.